

AMENDED IN SENATE JUNE 20, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 853**

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**Introduced by Assembly Member Blumenfield**  
**(Coauthors: Assembly Members Beall, Cook, and Garrick)**

February 17, 2011

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~~An act to amend Sections 68074 and 68075 of the Education Code, relating to public postsecondary education. An act to add and repeal Section 46300.8 of the Education Code, relating to online education.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 853, as amended, Blumenfield. ~~Public postsecondary education: tuition and fees: veterans. Online education: school attendance.~~

*Existing law establishes the public elementary and secondary school system in this state, and further establishes a funding system pursuant to which the state apportions funds to local educational agencies based on, among other factors, the average daily attendance of pupils at the schools operated by those agencies. Numerous statutes and regulations govern the calculation and reporting of average daily attendance.*

*This bill, commencing with the 2013–14 fiscal year, would provide that school districts, county offices of education, and charter schools that offer online education courses may claim attendance toward average daily attendance on the basis of a pupil's attendance in an online course or courses that satisfy prescribed criteria.*

*The bill would require the Superintendent of Public Instruction, in consultation with the Controller and Director of Finance, on or before December 31, 2012, to make revisions to any attendance accounting manual or guidance provided to school districts, county offices of education, or charter schools that are necessary to conform to these*

*provisions, or to clarify these provisions with respect to attendance accounting procedures for asynchronous online courses, as defined. The bill additionally would require the Superintendent, in consultation with the Director of Finance, to adopt rules and regulations for the purposes of clarifying or expanding the procedures required for verifying the identification of pupils participating in asynchronous online courses and including pupil attendance in asynchronous online education courses in the calculation of average daily attendance.*

*The bill would make all of these provisions inoperative on July 1, 2017, and repeal them on January 1, 2018.*

~~Existing law establishes uniform student residency requirements for purposes of ascertaining the amount of fees to be paid by students at public institutions of higher education in the state. Existing law entitles an undergraduate student who is a dependent of a member of the Armed Forces of the United States stationed in this state on active duty to resident classification for purposes of determining the amount of tuition and fees. Existing law entitles a graduate student, under the same circumstances, to resident classification for no more than one academic year, after which he or she is subject to the general provisions otherwise establishing student residency requirements.~~

~~Existing law allows a student dependent of a member of the Armed Forces to keep his or her resident classification until he or she has resided in the state for the minimum time necessary to become a resident in the event the member of the Armed Forces upon whom they are dependent is transferred outside of the state or retires as an active member of the Armed Forces.~~

~~Existing law also grants a member of the Armed Forces who is stationed in the state on active duty, except a member assigned for educational purposes to a state-supported institution of higher education, to resident classification for tuition purposes. A member of the Armed Forces seeking a graduate degree is entitled to resident classification for no more than 2 academic years.~~

~~Federal law prohibits a state receiving federal assistance under the Higher Education Opportunity Act from charging a higher rate for attendance at a public institution of higher education than is charged to residents of the state to a member of the Armed Forces who is on active duty for more than 30 days and whose domicile or permanent duty station is in the state, or to his or her spouse or dependent child. Existing federal law requires that the rate continue to apply so long as the member or his or her spouse or dependent child is continuously enrolled at the~~

institution, notwithstanding a subsequent change in the permanent duty station of the member to a location outside of the state.

~~This bill would amend state law to conform with federal law granting a member of the Armed Forces, or his or her dependent, as provided, entitlement to resident classification for so long as he or she is continuously enrolled at that institution.~~

~~The bill would request the Regents of the University of California to establish the same residency requirements as those established by this bill for students enrolled at the University of California.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 46300.8 is added to the Education Code,  
2     to read:  
3     46300.8. (a) Commencing with the 2013–14 fiscal year, a  
4     school district, county office of education, or charter school may  
5     claim attendance toward average daily attendance, for the  
6     purposes of calculating average daily attendance pursuant to  
7     Section 46300, on the basis of a pupil’s attendance in an online  
8     course or courses if all of the following apply:  
9         (1) The pupil is enrolled in grade 9, 10, 11, or 12.  
10        (2) The pupil is enrolled in classes that include courses in a  
11        classroom-based setting, courses that are offered through an online  
12        program, or both.  
13        (3) The pupil meets minimum instructional time requirements  
14        pursuant to:  
15            (A) Section 46141 and Section 46201, 46201.5, or 46202, as  
16            applicable, for pupils enrolled in a noncharter school in a school  
17            district or county office of education.  
18            (B) Section 46170, for pupils enrolled in a continuation school.  
19            (C) Section 46180, for pupils enrolled in an opportunity school.  
20            (D) Subdivision (e) of Section 47612.5, for pupils enrolled in a  
21            charter school.  
22        (4) Each online course in which the pupil is enrolled is a  
23        high-quality online course.  
24        (b) For the purposes of this section, a “high-quality online  
25        course” is defined as an online course that meets all of the  
26        following requirements:

1     (1) *The online course is approved by the governing board of*  
2 *the school district or county office of education, or by the governing*  
3 *body of the charter school.*

4     (2) *The online course is certified to meet these requirements,*  
5 *through board resolution, by the governing board of the school*  
6 *district or county office of education, or by the governing body of*  
7 *the charter school.*

8     (3) *The online course is certified by the governing board of the*  
9 *school district or county office of education, or by the governing*  
10 *body of the charter school, as being as rigorous as a*  
11 *classroom-based course and meeting or exceeding all relevant*  
12 *state content standards.*

13     (4) *Either of the following:*

14     (A) *The teacher is online at the same time as each pupil, is*  
15 *accessible to each pupil attending the synchronous online course*  
16 *to respond to pupil queries, assign tasks, and dispense information,*  
17 *and is able to make a visual connection with each pupil for the*  
18 *purposes of verifying attendance or providing immediate*  
19 *supervision of the pupil.*

20     (B) *The teacher may be online at different times than each pupil,*  
21 *is accessible to each pupil attending the asynchronous online*  
22 *course to respond to pupil queries, assign tasks, and dispense*  
23 *information, and, for the purposes of verifying attendance, is able*  
24 *to employ at least one of the following:*

25         (i) *Periodic proctored examinations.*

26         (ii) *Direct teacher-pupil meetings no less than twice per*  
27 *calendar month.*

28         (iii) *A visual connection including, but not limited to, Internet*  
29 *Webcam.*

30     (5) (A) *The ratio of pupils enrolled in that course to full-time*  
31 *equivalent certificated teachers teaching the online course is less*  
32 *than or equal to the ratio of pupils to teachers in traditional*  
33 *classroom study of the same subject matter in the school, school*  
34 *district, or the unified school district with the largest average daily*  
35 *attendance of pupils in that county for the prior school year, as*  
36 *reported on the Internet Web site of the department.*

37     (B) *If the online course is new or deemed by the governing board*  
38 *of the school district or county office of education, or by the*  
39 *governing body of the charter school, to be unique to the online*  
40 *setting, the ratio of pupils enrolled in that course to full-time*

1 *equivalent teachers teaching the online course shall not exceed*  
2 *30 to 1.*

3 *(6) When a traditional classroom-based course of the same*  
4 *course title exists within the school district, county office of*  
5 *education, or charter school, the subject matter content of the*  
6 *online course is the same as for the traditional classroom-based*  
7 *course.*

8 *(7) The teacher of the online course holds the appropriate*  
9 *subject matter credential and meets the requirements for a highly*  
10 *qualified teacher pursuant to the federal No Child Left Behind Act*  
11 *of 2001 (20 U.S.C. Sec. 6301 et seq.).*

12 *(8) Statewide testing results for online pupils are reported and*  
13 *assigned to the school in which the pupil is enrolled for regular*  
14 *classroom courses, and to any school district or county within*  
15 *which that school's testing results are aggregated.*

16 *(9) The online course is offered by a high school, continuation*  
17 *school, county office of education, or charter school offering*  
18 *instruction in any of grades 9 to 12, inclusive.*

19 *(10) No pupil is assigned to the online course unless the pupil*  
20 *voluntarily elects to participate in the online course and the parent*  
21 *or guardian of the pupil provides written consent before the pupil*  
22 *participates in the online course.*

23 *(11) No pupil voluntarily electing to participate in the online*  
24 *course is denied access because the pupil lacks the computer*  
25 *hardware or software necessary to participate in the online course.*

26 *(12) No pupil is charged for his or her participation in the online*  
27 *course.*

28 *(13) Pupils enrolled in the online course take examinations by*  
29 *proctor or other reliable methods are used to ensure test integrity,*  
30 *and there is a clear record of pupil work, using the same method*  
31 *of documentation and assessment as used in a classroom-based*  
32 *course.*

33 *(14) Contemporaneous records of the time that a pupil spends*  
34 *online in the course and in related activities, and of the time the*  
35 *teacher is online with pupils, are maintained by the school district,*  
36 *county office of education, or charter school.*

37 *(c) Nothing in this section shall be interpreted to mean that a*  
38 *charter school provides classroom-based or nonclassroom-based*  
39 *instruction for the purposes of the state board determination made*  
40 *pursuant to Section 47612.5.*

1     (d) Attendance accounted for pursuant to subdivision (a) and  
2     compliance with the requirements of subdivision (b) are subject  
3     to the audit conducted pursuant to Section 41020.

4     (e) A pupil shall not be credited with more than five days of  
5     course attendance per calendar week or more than the total number  
6     of calendar days that regular classes are maintained by the school  
7     district, county office of education, or charter school during the  
8     fiscal year.

9     (f) The Superintendent, in consultation with the Controller and  
10    the Director of Finance, on or before December 31, 2012, shall  
11    do all of the following:

12    (1) Make revisions to any attendance accounting manual or  
13    guidance provided to a school district, county office of education,  
14    or charter school that are necessary to conform to this section.

15    (2) Make revisions to any attendance accounting manual or  
16    guidance provided to local educational agencies that are necessary  
17    to clarify attendance accounting procedures for asynchronous  
18    online courses.

19    (3) Make recommendations to the appropriate policy and fiscal  
20    committees in both houses of the Legislature and to the Governor  
21    regarding statutory changes that would be necessary to allow  
22    pupil attendance in asynchronous online courses to be included  
23    in the calculation of average daily attendance pursuant to Section  
24    46300.

25    (g) Pupil attendance in asynchronous online courses shall not  
26    be included in the calculation of average daily attendance pursuant  
27    to Section 46300 until the Superintendent has adopted rules and  
28    regulations pursuant to subdivision (k).

29    (h) For the purposes of calculating average daily attendance  
30    pursuant to Section 46300 and meeting the minimum instructional  
31    time requirements specified in paragraph (3) of subdivision (a):

32    (1) A pupil enrolled in a noncharter school and engaged in  
33    educational activities in an online course meeting the requirements  
34    of subdivisions (a) and (b) shall be deemed to be under the  
35    immediate supervision and control of an employee of the district  
36    or county office who possesses a valid certification document,  
37    registered as required by law.

38    (2) A pupil enrolled in a charter school and engaged in  
39    educational activities in an online course meeting the requirements

1 of subdivisions (a) and (b) shall be deemed to be attending at the  
2 schoolsite of the charter school.

3 (i) For the purposes of calculating average daily attendance  
4 pursuant to Section 46300, a school district, county office of  
5 education, or charter school claiming pupil attendance in an online  
6 course meeting the requirements of subdivision (b) shall not be  
7 required to meet the requirements of Article 5.5 (commencing with  
8 Section 51745) of Chapter 5 of Part 28.

9 (j) For the purposes of this section, the following definitions  
10 apply:

11 (1) "Asynchronous online course" means a course where the  
12 teacher and pupil may be online at different times and are unable  
13 to interact simultaneously.

14 (2) "Synchronous online course" means a course where the  
15 teacher and pupil are online at the same time and able to interact  
16 at that time.

17 (k) The Superintendent, in consultation with the Department of  
18 Finance, shall adopt rules and regulations, pursuant to the  
19 rulemaking provisions of the Administrative Procedure Act  
20 (Chapter 3.5 (commencing with Section 11340) of Part 1 of  
21 Division 3 of Title 2 of the Government Code), for both of the  
22 following purposes:

23 (1) Clarifying or expanding the procedures required for  
24 verifying the identification of pupils participating in asynchronous  
25 online courses meeting all of the requirements of subdivisions (a)  
26 and (b).

27 (2) Including pupil attendance in asynchronous online courses  
28 in the calculation of average daily attendance pursuant to Section  
29 46300. The Superintendent shall ensure that the rules and  
30 regulations adopted for this purpose are consistent with the  
31 revisions and recommendations required pursuant to subdivision  
32 (f).

33 (l) No provision of this section shall be waived unless the waiver  
34 is specifically authorized in statute.

35 (m) This section shall become inoperative on July 1, 2017, and,  
36 as of January 1, 2018, is repealed, unless a later enacted statute,  
37 that becomes operative on or before January 1, 2018, deletes or  
38 extends the dates on which it becomes inoperative and is repealed.

39 **SECTION 1.** ~~Section 68074 of the Education Code is amended~~  
40 ~~to read:~~

~~68074. (a) A student who is a natural or adopted child, stepchild, or spouse who is a dependent of a member of the Armed Forces of the United States stationed in this state on active duty is entitled to resident classification only for the purpose of determining the amount of tuition and fees.~~

~~(b) If that member of the Armed Forces of the United States, whose dependent natural or adopted child, stepchild, or spouse is in attendance at an institution, (1) is thereafter transferred on military orders to a place outside this state where the member continues to serve in the Armed Forces of the United States, or (2) is thereafter retired as an active member of the Armed Forces of the United States, the student dependent shall not lose his or her resident classification so long as he or she remains continuously enrolled at that institution.~~

~~SEC. 2. Section 68075 of the Education Code is amended to read:~~

~~68075. (a) A student who is a member of the Armed Forces of the United States stationed in this state on active duty, except a member of the Armed Forces assigned for educational purposes to a state-supported institution of higher education, is entitled to resident classification only for the purpose of determining the amount of tuition and fees.~~

~~(b) If that member of the Armed Forces of the United States who is in attendance at an institution is thereafter transferred on military orders to a place outside this state where the member continues to serve in the Armed Forces of the United States, he or she shall not lose his or her resident classification so long as he or she remains continuously enrolled at that institution.~~

~~SEC. 3. The Legislature hereby requests the Regents of the University of California to establish the same residency classifications for students enrolled at the University of California as those enacted by this act.~~